

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ISAIAH GIVENS	:	CIVIL ACTION
	:	
v.	:	No. 02-2655
	:	
KENNETH D. KYLER ET AL.	:	

ORDER

AND NOW, this 14th day of December, 2004, upon consideration of the Appellant's/Petitioner's Request for Permission for Certificate of Appealability (Document No. 28), it is **ORDERED** that the motion is **DENIED** for lack of jurisdiction.¹

TIMOTHY J. SAVAGE, J.

¹ On October 19, 2004, the petitioner appealed our decision denying his *habeas corpus* petition to the United States Court of Appeals for the Third Circuit. The record was transmitted to the appeals court on October 22, 2004. The present motion was filed on November 18, 2004.

Because the petitioner's case is on appeal, we lack jurisdiction to consider any motions. *Cf. SEC v. Investors Sec. Corp.*, 560 F.2d 561, 568 (3d Cir. 1977) ("It is well settled that the 'filing of a notice of appeal immediately transfers jurisdiction of a case from the District Court to the Court of Appeals.'" (citations omitted)). The only avenue open to the petitioner is to seek a certificate of appealability from the appeals court pursuant to Federal Rule of Appellate Procedure 22(b)(1).